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Washington, D.C. 20231

On August 2, 2000

TOWNSEND and TOWNSEND and CREW LLP

By: Jennifer K. Hardin

PATENT
Attorney Docket No.: 015280-377000US
Client Reference No.: E-286-98/0

#10
1-12-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

BRENNEMAN *et al.*

Application No.: 09/267,510

Filed: March 12, 1999

For: PREVENTION OF FETAL ALCOHOL SYNDROME AND NEURONAL CELL DEATH WITH ADNF POLYPEPTIDES

Examiner: Sharon L. Turner

Art Unit: 1644

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the restriction requirement mailed June 2, 2000, Applicants hereby elect with traverse to prosecute the claims of Group I (claims 1-18) drawn to a method for reducing a condition associated with fetal alcohol syndrome. A petition to extend the time for response for one month, from July 2, 2000 to and including August 2, 2000, accompanies this Response to the restriction requirement.

According to the Office Action, Inventions I and II are distinct methods because the Inventions comprise different reagents, steps and perform distinct functions. The Office Action further states that Inventions I and II and III are related as product and process of Applicants respectfully traverse the restriction requirements.

As MPEP §803 states:

> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on

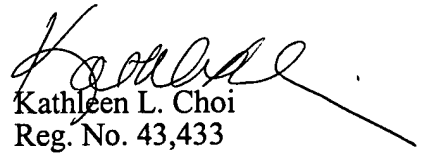
> the merits, even though it includes claims to distinct and/or independent inventions. (emphasis added).

It is submitted that any additional burden on the Examiner in considering the claims of Groups I, II, and III together is not so serious as to require restriction, because searches of the three groups of inventions would be coextensive. For example, each group of invention recites the use of ADNF I polypeptide and ADNF III polypeptide. Therefore, each group would require searching of a subject matter that is coextensive. Accordingly, Applicants believe that there is no undue burden on the Examiner in examining all of the groups of inventions together.

Moreover, Applicants note that the inventions of Group I and Group II are improperly classified. According to the Office Action, the Invention of Group I drawn to a method for reducing a condition associated with fetal alcohol syndrome is classified in class 530, subclass 350. However, class 530, subclass 350 in the Manual of Classification relates to "proteins, i.e., more than 100 amino acids." Class 530, subclass 350 does not relate to a method. Moreover, according to the Office Action, the Invention of Group II drawn to a method for reducing neuronal cell death is classified in class 536, subclass 23.1. However, class 536, subclass 23.1 relates to "DNA or RNA fragments or modified forms thereof (e.g., genes)." The classes and subclasses cited in the Office Action do not support that the inventions of Group I and Group II are separately classifiable in the Manual of Classification. Accordingly, the Office has not met its initial burden of properly establishing reasons for insisting upon restriction based on different classification in the art. Accordingly, the restriction is improper.

In view of the foregoing, withdrawal of the restriction requirement is respectfully requested. If any fee is due, please charge or debit Deposit Account No. 20-1430 the appropriate amount. If the Examiner believes that a telephone conference would aid in the prosecution of this case in any way, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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